IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5851 OF 2005

Gorakh Tukaram Gaikwad ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Mrs.Sarojini Upadhyay, amicus curiae, for the Applicant.
Mr.V.B.Konde-Deshmukh, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : APRIL 27, 2006.
(IN CHAMBER:2:45 P.M.)

P.C.:

. Heard Mrs.Sarojini Upadhyay, amicus curiae, for the applicant and Mr.V.B.Konde-Deshmukh, learned APP for the State.

2. The applicant has been convicted under Sections 395, 397 of IPC in Sessions Case No.2 of 2002 by the Sessions Court at Kopargaon, District : Ahmednagar vide judgment and order dated

5.5.2003. The applicant was sentenced to suffer R.I. for seven years. The applicant preferred Appeal before the Aurangabad bench of this High Court. The appeal came to be partly allowed and the sentence of the applicant came to be reduced.

3. The applicant was also convicted under Sections 395, 397 of IPC in Sessions Case No.183 of 2000 by the Sessions Court at Nashik. He was sentenced to suffer R.I. for nine years.

4. Now, the applicant has prayed that the sentences in both these cases be directed to run concurrently.

5. The Supreme Court in the case of **Mohd. A. Hussain Vs. Asstt.Collector, Customs (Prevention) Ahmedabad** reported in **A.I.R. 1988 S.C. 2143** has observed as follows :

> "The basic rule of thumb over the years has been the so called single transaction rule on concurrent sentences. If a given transaction constitutes two offences under

> two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different." (emphasis supplied).

. The later principle will govern the case on hand. In other words, as both the offences committed by the applicant were independent and not arising from one transaction as such, the applicant ought to suffer consecutive sentences and the sentences in the two cases cannot be directed to run concurrently.

6. This Court also has taken a similar view in the case of **Ramesh Krishna Sawant Vs. State of Maharashtra**, reported in **1994 Mh.L.J.Vol.I 825**. This Court has held that in respect of cases arising out of different transactions registered under different C.Rs., the sentences cannot be directed to run concurrently. Similar view was taken by this Court in earlier decisions i.e. Cri.Application No.893 of 1998 decided on 27.3.1998, Cri.Application No.1106 of 1998 decided

on 8.6.1998, Cri.Application No.1447 of 1998 decided on 29.6.1998 and Cri.Application No.1615 of 1998 decided on 6.7.1998.

7. Looking to the facts of the case and legal position, the prayer of the applicant cannot be considered. Hence, the application is rejected.

(SMT.V.K.TAHILRAMANI,J.)